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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/782,704	02/19/2004	Charles Burton Whittaker JR.	034159/258175	5549
826	7590	02/07/2006	EXAMINER	
ALSTON & BIRD LLP BANK OF AMERICA PLAZA 101 SOUTH TRYON STREET, SUITE 4000 CHARLOTTE, NC 28280-4000			SOOHOO, TONY GLEN	
			ART UNIT	PAPER NUMBER
			1723	

DATE MAILED: 02/07/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/782,704

Applicant(s)

WHITTAKER ET AL.

Examiner

Tony G. Soohoo

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 29 February 2004.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-26 is/are pending in the application.
- 4a) Of the above claim(s) 15-26 is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-14 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date <u>2-19-04</u> . | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Election/Restrictions

1. Restriction to one of the following inventions is required under 35 U.S.C. 121:
 - I. Claims 1-14, drawn to an auger with segments, classified in class 366, subclass 366/79.
 - II. Claims 15-21, drawn to a kit of an auger shaft and pulling tool combination, classified in class 29, subclass 284.
 - III. Claims 22-23, drawn to a pulling tool, classified in class 29, subclass 278.
 - IV. Claims 24-26, drawn to a method of removing a auger segment of an auger, classified in class 29, subclass 889.1.

The inventions are distinct, each from the other because of the following reasons:

2. Inventions Group I and Group II are related as subcombinations disclosed as usable together in a single combination. The subcombinations are distinct from each other if they are shown to be separately usable. In the instant case, invention III has separate utility such as pulling hubs off a rotatable shaft. See MPEP § 806.05(d).
3. Inventions III and IV are related as product and process of use. The inventions can be shown to be distinct if either or both of the following can be shown: (1) the process for using the product as claimed can be practiced with another materially different product or (2) the product as claimed can be used in a materially different process of using that product (MPEP § 806.05(h)). In the instant case tool may be used to remove a hub off a rotatable drive shaft.

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4. Inventions II and each of group I and III are related as combination and subcombination. Inventions in this relationship are distinct if it can be shown that (1) the combination as claimed does not require the particulars of the subcombination as claimed for patentability, and (2) that the subcombination has utility by itself or in other combinations (MPEP § 806.05(c)). In the instant case, the combination as claimed does not require the particulars of the subcombination as claimed because as evidenced by the features of the auger shaft or features of the tool absent the respective subcombination. The subcombination has separate utility such as the tool may be used to remove a hub, and the auger may be used and removed by a force provided without the tool.

5. Because these inventions are distinct for the reasons given above and the search required for Groups I,II,III,IV is not required for the other of the respective Group I,II,III,IV, restriction for examination purposes as indicated is proper.

6. During a telephone conversation with K Roberson on 1-27-2006 a provisional election was made WITHOUT traverse to prosecute the invention of Group I, auger, claims 1-14. Affirmation of this election must be made by applicant in replying to this Office action. Claims 15-26 are withdrawn from further consideration by the examiner, 37 CFR 1.142(b), as being drawn to a non-elected invention.

7. Applicant is reminded that upon the cancellation of claims to a non-elected invention, the inventorship must be amended in compliance with 37 CFR 1.48(b) if one or more of the currently named inventors is no longer an inventor of at least one claim

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remaining in the application. Any amendment of inventorship must be accompanied by a request under 37 CFR 1.48(b) and by the fee required under 37 CFR 1.17(i).

Claim Rejections - 35 USC § 102

8. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

9. Claims 1-14 are rejected under 35 U.S.C. 102(b) as being anticipated by Williamson 4838700 (Kirk Williamson).

Williamson teaches an auger figure 1 with segments shown in figures 2-5, a flight 26, a keyway 45 to fit in a key 46 upon the shaft 17 of the auger and having two opposed opening access way with a threaded surface for engaging the fasteners 44, 44. It is noted during disassembly the threaded surfaces provide an engagement surface in direction away from the face of an auger segment in which one may use a tool to engage the treaded protrusion surfaces away from the forward end so as to provide a pulling surface provided by the notch of the receiving threads of the Williamson reference.

10. Claims 1-14 are rejected under 35 U.S.C. 102(b) as being anticipated by Blach 4334785 (Blach '785).

Blach '785 teaches an auger figure 1 with segments 20, 20, a flight, a keyway 14 to fit in a key upon the shaft of the auger and having two opposed opening access way

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40, 40, 40 with a surface 42d for engaging the head fasteners 44, 44. In which may be pulled upon if the fastener 42 is pulled to the left in figure 1 during disassembly surface provided by the notch of the receiving threads of the Williamson reference.

Blach '785 also teaches rearward surfaces on 114, in figure 3, 116, 116 in figure 6 which can be used to provide a surface to pull upon the segment.

Claim Rejections - 35 USC § 103

11. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

12. Claims 1-14 are rejected under 35 U.S.C. 103(a) as being unpatentable over Brockett 167061 in view of Hendrian 6216327 (cited on PTO 1449).

Brockett discloses an auger with a haft A an key x for connection with the auger segments D in the keyway y in the hub C. Brockett discloses all of the recited subject matter as defined within the scope of the claims with the exception of having an access opening or engaging surface rearward of the front to provide a pulling surface to pull upon the hub C. The reference to Hendrian teaches that a hub 46, 48 may be provided with an opening 80 and rearward surface 88 to provide a manner to assist in pulling off a hub from a shaft.

In view of the teaching of Hendrian, it is deemed that it would have been obvious to one of ordinary skill in the art to provide for the hub C of Brockett with an opening and

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rearward facing engaging surface so that the auger segment may be more easily removed.

Conclusion

13. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. The following disclose examples of auger sections: Salaby 3672641, Blach 5314245, Williams 4901635, Mueller 1101142, Steele 1815809, Baker 3652062, and Anders 4167339.

14. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Tony G. Soohoo whose telephone number is (571) 272 1147. The examiner can normally be reached on 7-5PM, Tue-Fri.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Wanda Walker can be reached on 571-272-1151. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



Tony G Soohoo
Primary Examiner
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